

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BRUCE W. BECKMAN and U.S. POSTAL SERVICE,
POST OFFICE, Princeton, NJ

*Docket No. 99-2567; Submitted on the Record;
Issued December 8, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether appellant has more than a 23 percent permanent impairment of the right knee for which he received a schedule award.

On June 6, 1996 appellant, then a 47-year-old clerk, injured his left knee when he twisted his leg, while attempting to pick up a piece of mail. The Office of Workers' Compensation Programs accepted the claim for a left knee sprain and authorized arthroscopic surgery to repair the tear of the medial and lateral meniscus knee injury.¹

In a June 10, 1997 operative report, Dr. C. Alexander Moskwa, Jr., an orthopedic surgeon, noted performing an arthroscopic debridement of tears of the medial and lateral meniscal remnants, diffuse osteochondral defects of the medial and lateral femoral condyle and anterior cruciate ligament (ACL) remnants.

In a August 15, 1997 status report, Dr. Moskwa noted that appellant felt "80 percent" better and had a range of motion of 0 to 110 degrees.

On June 29, 1998 appellant filed a claim for a schedule award. Appellant submitted a June 29, 1998 medical report from Dr. Nicholas P. Diamond, an osteopath, who evaluated appellant for permanent impairment arising from his accepted employment injury in accordance with the American Medical Association, (A.M.A.) *Guides to the Evaluation of Permanent Impairment*, (fourth edition 1993), Dr. Diamond determined that appellant sustained a 32 percent impairment; 10 percent rating for range of motion deficit left knee flexion; a 13 percent

¹ Appellant underwent surgical arthroscopy of the left knee in 1992. It is unclear from the record whether this was an employment-related injury. However, this issue is not before the Board at this time.

rating for atrophy of the left thigh; a 13 percent rating for atrophy left calf, for a total combined impairment of left lower extremity of 32 percent.²

Dr. Diamond's report and the case record were referred to the Office's medical adviser who determined that appellant sustained a 23 percent impairment of the left lower extremity.

In a decision dated September 3, 1998, the Office granted appellant a schedule award for a 23 percent permanent disability of the left leg.

Appellant, through his attorney, requested a hearing before an Office hearing representative, which was held March 22, 1999. In a May 4, 1999 decision, the hearing representative affirmed the decision of the Office dated September 3, 1998. The hearing representative determined that the Office medical adviser applied the proper edition of the A.M.A., *Guides* to the information provided in Dr. Diamond's report and reached the appropriate impairment rating of 23 percent.

The Board finds that appellant has no more than a 23 percent impairment of the left lower extremity.

Section 8107 of the Federal Employees' Compensation Act, specifies the number of weeks of compensation to be paid for the permanent loss of use of specified members, functions and organs of the body. The Act, however, does not specify the manner by which the percentage of loss of a member, function or organ shall be determined. The method used in making such a determination is a matter which rests in the sound discretion of the Office.³ For consistent results and to ensure equal justice under the law to all claimants, the Office has adopted the A.M.A., *Guides*, as the standard for determining the percentage of permanent impairment and the Board has concurred in such adoption.⁴

On appeal appellant alleges that there was a conflict in medical evidence between appellant's physician, Dr. Diamond and the Office medical adviser and, therefore, the case should be referred to a referee physician for final determination.

In his report, Dr. Diamond found a 32 percent impairment, consisting of 10 percent for range of motion deficit left knee flexion, 13 percent for atrophy of the left thigh and 13 percent for atrophy left calf, using pages 77 and 78 of the A.M.A., *Guides*. Dr. Diamond determined the 10 percent rating after testing appellant's range of motion of his knee. The test revealed flexion-extension of 0-115/140 degrees. Dr. Diamond improperly calculated the rating of loss range of motion for the left knee flexion at 10 percent impairment. The A.M.A., *Guides* provide that the rating of loss of knee flexion for flexion-extension of less than 110 percent should be 10 percent

² Dr. Diamond obtained his rating from Table 41, page 78; Table 37, page 77 and Table 37 page 77 of the A.M.A., *Guides*.

³ *Danniel C. Goings*, 37 ECAB 781 (1986); *Richard Beggs*, 28 ECAB 387 (1977).

⁴ *Henry L. King*, 25 ECAB 39 (1973); *August M. Buffa*, 12 ECAB 324 (1961), *Francis John Kilcoyne*, 38 ECAB 168 (1987).

impairment.⁵ In this case, Dr. Diamond determined appellant's flexion-extension to be 115 percent, which results in an impairment rating of 0 percent.⁶

The Office medical adviser used the findings in Dr. Diamond's report to determine appellant's impairment due to atrophy. The Office medical adviser noted that Dr. Diamond reported atrophy of the thigh of 2.5 centimeters. The A.M.A., *Guides* provide an impairment range of 8 to 13 percent that for 2 to 2.9 centimeters of atrophy. The Office medical adviser chose 11 percent. The medical adviser also noted Dr. Diamond's finding of atrophy of the calf of 3 centimeters, which indicated a rating of 13 percent impairment.⁷ The Office medical adviser then applied the Combined Values Chart to conclude that appellant's impairment of the left lower extremity totaled 23 percent. The Board finds that the Office medical adviser properly applied Dr. Diamond's findings to the A.M.A., *Guides* in calculating appellant's permanent impairment.⁸

The Board notes that a medical conflict does not exist as contended by counsel. Dr. Diamond did not properly follow the procedures as set forth on page 78 of the A.M.A., *Guides*.⁹ The Office medical adviser properly applied the A.M.A., *Guides* to the information provided in Dr. Diamond's report and reached an impairment rating of 23 percent.¹⁰ This evaluation conforms to the A.M.A., *Guides* and establishes that appellant has no more than a 23 percent permanent impairment of the left lower extremity.

⁵ See page 78 of the *Guides*.

⁶ See Table 41, page 78 of the *Guides*.

⁷ See page 77, Table 37 of the *Guides*.

⁸ The Office medical adviser properly found an 11 percent impairment for 2.5 centimeters of thigh atrophy as 2.5 is about in the middle of the 2 to 2.9 centimeter range for moderate impairment and 11 is approximately in the middle of the range of allowable impairment, 8 to 13 percent.

⁹ See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993) (an attending physician's report is of little probative value where the *Guides* were not properly followed); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the *Guides* are utilized is of little probative value).

¹⁰ Appellant's attorney contended that appellant should be entitled to 10 percent impairment loss of flexion under Table 41 of the *Guides* as Dr. Moskwa's August 15, 1997 report indicated flexion of 0 to 110 percent. However, this report is insufficient to create a medical conflict as there is no evidence that appellant had reached maximum medical improvement at this point, about two months post-surgery, and it is well established that a schedule award cannot be determined and paid until a claimant has reached maximum medical improvement. See *Joseph R. Waples*, 44 ECAB 936 (1993).

The decision of the Office of Workers' Compensation Programs dated May 4, 1999 is hereby affirmed.

Dated, Washington, DC
December 8, 2000

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member